

-----Original Message-----

From: Richard Roos-Collins [mailto:rrcollins@n-h-i.org]

Sent: Sunday, October 26, 2003 5:35 PM

To: Avani Khanna; Anna West

Subject: RE: Process Task Force Update

Anna:

I regret that I will not participate in the 10/28 meeting of the Plenary Group. I have an unavoidable conflict that requires me to be elsewhere, and teleconferencing is not available for this meeting.

I request that you read this to express my strong support for the adoption of the Negotiation Protocols as an amendment to the Process Protocols.

1. The Process Task Force has met for more than six months to develop the Negotiation Protocols. Its members have invested a great deal of time and effort in this guidance, and we have reached the point of diminishing returns. It is time to call the question. I recommend that we, as a Plenary Group, honor the principle, "first things first." We should focus our primary efforts on substance, rather than continue to debate future process. We should assure that the Work Groups adequately develop and study the PM&E measures that will be the basis for negotiation next spring.

2. Several Task Force members remain concerned that the confidentiality protocol may restrict their ability to report to their constituencies in the course of the negotiations, or may encourage back room deals. I respectfully disagree. This protocol is not DWR's trick or invention. It is standard in every licensing negotiation, because FERC's Rules of Practice and Procedure expressly provide that communications in the course of negotiation are and always will be confidential. That means that such communications cannot be submitted as evidence or admission in a contested proceeding (eg, if negotiation fails). Subject to that limitation, however, each negotiator may report confidential communications to his or her Governing Board or other constituents as necessary to keep them posted and also get the necessary authority to negotiate further.

3. The rather slow progress of the Process Task Force reflects a continuing problem of distrust directed at DWR. Further refinement of the Negotiation Protocol will not cure that distrust. I remain confident that, once negotiations begin and proceed in good faith, we will develop that level of trust necessary for the settlement that will be the basis for the new license.

4. Finally, I accept the SWRCB's revisions to better describe its authority.

Good luck tonight. RRC

Richard Roos-Collins

Senior Attorney,

Natural Heritage Institute

2140 Shattuck Avenue, 5th floor

Berkeley, CA 94704

(510) 644-2900 ext. 103

(888) 589-1974 (fax)

www.n-h-i.org